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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,534	05/19/2006	Roger Pellec	1811-72	4418
24106	7590	04/29/2009	EXAMINER	
EGBERT LAW OFFICES			PUNNOOSE, ROY M	
412 MAIN STREET, 7TH FLOOR			ART UNIT	PAPER NUMBER
HOUSTON, TX 77002			2886	
MAIL DATE		DELIVERY MODE		
04/29/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/551,534	<b>Applicant(s)</b> PELLENC, ROGER
	<b>Examiner</b> ROY PUNNOOSE	<b>Art Unit</b> 2886

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 September 2005.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-21 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 30 September 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/06/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 8, 16 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 8, 16 and 21 the claimed "health status" is a very general terminology and it is not clear what it specifically means and/or represents in said claims. Appropriate correction is required.

3. Claim 7 recites the limitation "the cordon" in line 5. There is insufficient antecedent basis for this limitation in the claim. There is no prior reference of a "cordon" in claim 7 or its parent claim, claim 1. Appropriate correction is required.

4. Claim 10 recites the limitation "the front emitter and the rear emitter" in line 6. There is insufficient antecedent basis for this limitation in the claim. There is no prior reference of a "front or rear emitter" in claim 10 or its parent claim, claim 9. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bacchini et al (EP 0 974 262 A1) in view of what is well-known in the art.

7. Claims 1 and 9 are rejected because:

- A. Bacchini et al (Bacchini hercinafter) teaches of an apparatus for analysis of the structure of cultivated hedgerows adapted to a machine that is mobile in continuous operation in trained and/or staked plantations, such as vineyards, (see Figure 3) comprising: utilizing an artificial vision system functioning by direct transmission to determine blockages of light between one or more emitters 6 and one or more receivers 15 placed facing each other, on either side of the hedgerow, and handling information produced by these blockages of light by an electronic analysis system 10 programmed or configured to examine the elements of the structure of the hedgerow 13 (see paragraphs [0015] - [0050]). However Bacchini does not specifically teach of processing or analyzing either during the day or at night.
- B. Processing or analyzing hedgerows or plants either during the day or at night is well-known in the art.
- C. In view of what is well-known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the step of processing or analyzing hedgerows or plants either during the day or at night into Bacchini's apparatus or system due to the fact that by conducting the processing and or analyzing during day and/or night, the production capacity can be increased significantly and costs can be reduced.

8. Claims 1-8 and 10-21 are rejected for the same reasons of rejection of claims 1 and 9 above and because their claimed limitations are well-known in the art and therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to

incorporate the claimed steps into Bacchini's apparatus or system due to the fact they would make the production more efficient while reducing the costs.

9. Several facts have been relied upon from the personal knowledge of the examiner about which the examiner took Official Notice in this office action. Applicant must seasonably challenge well known statements and statements based on personal knowledge when they are made. *In re Selmi*, 156 F.2d 96, 70 USPQ 197 (CCPA 1946); *In re Fischer*, 125 F.2d 725, 52 USPQ 473 (CCPA 1942). See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice). If applicant does not seasonably traverse the well-known statement during examination, then the object of the well-known statement is taken to be admitted prior art. *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, applicant is charged with rebutting the well-known statement in the next reply after the Office action in which the well known statement was made.

*Contact/Status Information*

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Roy M. Punnoose** whose telephone number is (571)272-2427. The examiner can normally be reached on 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Tarifur R. Chowdhury** can be reached on 571-272-2287. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*/Roy M. Punnoose/  
Primary Examiner  
Art Unit 2886*